REMARKS

Claims 1-22 were submitted for examination and remain in the case. Claims 1-22 stand rejected by the Examiner.

· Claims 1-22 stand rejected under 35 U.S.C. § 103 as being obvious over *Scherpbier et al.*, U.S. Patent Number 5,944,791 (hereinafter Scherpbier), in view of *Kalajan*, U.S. Patent Number 5,941,954 (hereinafter Kalajan). Applicant respectfully traverses the rejections of the claims of the present invention.

Claim 1 stands rejected under 35 U.S.C. § 103 as being obvious over Scherpbier in view of Kalajan. Scherpbier discloses a system and method for remotely controlling a second client / computer browser from a first client computer browser. Scherpbier does not explicitly show that the browser establishes direct communication with the listening program. However claim 1 is rejected as Kalajan discloses the listening program.

Initially, it may be instructive to review the invention described in the present application and the disclosures of the prior art. One aspect of the present invention is to provide a client, in a client-server system, that can be remotely accessed from any location (Page 5 lines 3-6). Another aspect of the invention is to provide a method for invoking a client that requires no special software other than a standard browser at the access location (Page 5 lines 10-12). To provide these aspects, the present application discloses a listening program configured to be responsive to requests for remote access from the browser, establish direct communications with the browser, and invoke a client agent for communicating with the browser and a server machine (claim 1, page 20, 1-6). A key aspect of the present invention is that the user or system administrator is able to remotely invoke the application as if he/she were positioned at the client. Figures 7 and 8 highlight one utility of the present invention that multiple clients may be accessed from a single location.

-2-

In contrast, Scherpbier teaches a method to control a specific type of program, a browser, on a second or passenger computer, from a first or pilot computer (Scherpbier, Figure 1). The method taught by Scherpbeir is limited to controlling the browser functions of the passenger computer. Scherpbeir further teaches that the pilot computer controls the passenger computer through a pilot applet (Scherpbeir 22, figure 1).

The present invention is distinguished from Scherpbeir in that Scherpbier teaches no remote control of client machine functions. The present invention teaches controlling and accessing all operations of a remote client computer (page 5, 10-12) whereas Scherpbeir teaches controlling only the browser functions (Scherpbeir 26, figure 1, column 2, 19-24) of a passenger user. Scherpbeir is further distinguished from the present invention by requiring a pilot applet (Scherpbeir 22, figure 1) be installed on the controlling computer, whereas the present invention teaches a system and method of remotely controlling a client computer through a browser without additional software (26, figure 2).

In further contrast to the present invention, Kalajan teaches a method of message redirection (Kalajan column 1, 36-43) that allows a user to access network resources from the user's client machine (Kalajan, figure 1). Kalajan teaches no remote user control of a client machine. The method taught in Kalajan does not remotely control the client machine because the user and the client machine are co-located. Kalajan further teaches downloading a software program that allows a user's computer to connect with a network resource (Kalajan column 1, 45-65). The listening program in Kalajan intercepts and directs messages to the remote network resource (Kalajan column 3, 66 – column 4, 18).

The present invention is distinguished from Kalajan in that the present invention controls a remote client machine while Kalajan allows a user to access network resources from the client

-3-

machine (Kalajan, figure 1). The listening program of the present invention is further

distinguished from the listening program of Kalajan by residing on a remote client machine (28,

Figure 2), instead of the user's client machine (Kalajan 20, Figure 1). The listening program of

the present invention is also distinguished by communicating with a client agent that co-exists on

the remote client machine (figure 2, 28 and 29), rather than redirecting messages to a remote

network resource (Kalajan column 3, 66 – column 4, 18).

With regard to the rejection of claim 1 under 35 U.S.C. § 103, Applicant respectfully

asserts that Scherpbier and Kalajan, either singly or in combination, do not teach or suggest a

manner of combining the references of Scherpbier and Kalajan such that the combination of

references renders the present invention obvious to one of ordinary skill in the art. Applicant

makes this assertion based on seven arguments. First, Scherpbier and Kalajan represent different

fields of endeavor from the present invention. Second, Scherpbier and Kalajan represent

different purposes from the present invention. Third, each and every element of the present

invention is not disclosed or obvious over Scherpbier even if Scherpbier had disclosed a listening

program. Fourth, Scherpbier and Kalajan do not teach or suggest the combination of references

such that the present invention would have been obvious to one of ordinary skill in the art. Fifth,

the combination of Scherpbier and Kalajan destroys the purpose and utility of either. Sixth, the

teaching or suggestion to combine Scherpbier and Kalajan can only be found in the Applicant's

disclosure . Seventh, Scherpbier should not be considered in view of Kalajan, as the listening

program disclosed by Kalajan embodies substantially different functions, structures, and results

from the present invention.

Initially, Applicant respectfully asserts that Scherpbier and Kalajan represent different

fields of endeavor from the present invention. The client machines of both Scherpbier

-4-

(Scherpbier, column 1, 24-26) and Kalajan (Kalajan, column 4, 23-28) have users. Scherpbier controls a browser of the user on a client machine (Scherpbier, figure 1). Kalajan gives the user of a client machine access to network resources (Kalajan, figure 1). Neither Scherpbier nor Kalajan teaches toward the field of endeavor of the present invention, the control of various functions of a remote client machine, facilitating features such as remote storage management. "In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). As neither Scherpbier nor Kalajan are in the present invention's field of endeavor, references to Scherpbier and Kalajan cannot be the basis for a proper rejection. Furthermore, as the two references are directed to different problems and fields from each other, they are not properly combinable under 35 U.S.C. § 103 absent a specific motivation or suggestion within one of the references.

Second, Applicant respectfully asserts that the respective purposes of Scherpbier and Kalajan are each different from the purpose of the present invention. The present application teaches control of a remote client machine to facilitate functions such as storage management that previously may have required a user to be present. In contrast, Scherpbier teaches controlling the browser of the user of client machine (Scherpbier, column 2, 14-19). Kalajan teaches a method for a user of a client machine to access network resources (Kalajan, column 4, 23-28). Because Scherpbier and Kalajan teach distinctly different purposes, the Applicant asserts that the suggested combination of the teachings is improper. *Ex parte Skinner*, 2 USPQ2d 1788 (Bd. Pat. App. & Inter. 1986).

-5-

Third, Applicant respectfully asserts that each and every element of the present invention is not disclosed in the combined references, even if the combination of references is proper because neither reference discloses a client agent for communicating with a client on a server. To establish *prima facie* case of obviousness, all claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, USPQ 580 (CCPA 1974). The present application discloses "a client machine further comprised of a listening program responsive to requests for remote access and a client agent communicating with the browser and a server machine." (claim 1, page 20, 1-6). The client agent (29, figure 2, page 6, 16 – page 7, 3) allows, in one embodiment, for instance, "the browser appear to the end user as the client machine." (Page 6, 19-21).

Control of client machine functions through a client agent are not disclosed by Scherpbier. Scherpbier discloses a passenger applet (Scherpbier 28, Figure 1) "to cause the passenger browser 26 to communicate with the control module 16 via the internet 23." (Scherpbier column 3, 65 – column 4, 1). The function of the passenger applet is clearly differentiated from the client agent (29, figure 2) of the present invention. Nor does Kalajan disclose a client agent for communicating with a browser and a server. Therefore each and every element of the present invention is not disclosed in the proposed combination of prior art references.

Furthermore, in neither reference does a browser request remote access as claimed in the claims of the present invention. Scherpbier distributes applets and receives URLs to be displayed to both clients. In Kalajan, a message redirection application operates within a browser, but does not request remote access. Consequently, the element of a browser requesting remote access is absent from both of the recited prior art patents.

-6-

The combined references also lack a listening program as recited in the claims of the present invention. Kalajan discloses a message redirection application with substantially different functions, structures, and results from the listening program of the present invention. The listening program of the present invention resides on the remote client machine (figure 2, 28), whereas the application of Kalajan resides on the user's machine (figure 1, 20). The listening program of the present invention is further configured to communicate with a client agent that co-exists on the remote client machine, whereas the application in Kalajan (Kalajan claim 1 column 6, 2-20) redirects messages to a remote network resource. In *Engel Industries v. The Lockformer Company*, the Federal Circuit noted that "It is not enough if both devices perform the same function when it is apparent from the patent drawings that the devices are differently constructed and perform that function in different ways." *Engel Indus. V. Lockformer Co.*, 96 F.3d 1398, 1406 (Fed. Cir. 1996).

The listening program of Kalajan (Kalajan, Claim 1, column 6 2-10) also embodies a substantially different result. The result of the Kalajan listening program is redirection (Kalajan column 3, 66 – column 4 11), whereas the listening program of the present invention receives messages directed to the listening program/client agent (28 listening program, 29 client agent, figure 2). The Federal Circuit has held that inventions with different structures and different results were not equivalent. *Lehman v. Dunham's Athleisure Corp.*, Civ. App. No 96-1381, 6 (Fed. Cir. Oct. 11, 1996). Therefore, Applicant respectfully asserts that Scherpbier should not be considered in view of Kalajan as prior art because the application described in Kalajan embodies substantially different functions, structures, and results from the listening program of the present invention.

-7-

Fourth, Applicant respectfully asserts that the incentive to combine the teachings of Scherpbier and Kalajan is not readily apparent. The Federal Circuit has held that prior art must teach or suggest to combine or modify the prior art references such that the combination or modification of the references would appear to be sufficient to have made the present invention obvious to one of ordinary skill in the art. *In re Lueders*, 111 F.3d 1569, 42 USPQ 2d 1481 (Fed. Cir. 1997).

The Federal Circuit has also stated that "[o]bviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching suggestion or incentive supporting the combination." *In re Geiger*, 815 F.2d 686, 688, 2 USPQ 2d 1276, 1278 (Fed. Cir. 1987). It appears that the Examiner has in hindsight used the present application as a roadmap to pick and choose from among the features of the prior art references. Neither Scherpbier nor Kalajan teach a suggestion or incentive to combine the listening program (Kalajan column 3, 66 – column 4, 18) of Kalajan with the browser control functions of Scherpbier (Scherpbeir 26, Figure 1, column 2, 19-24) to control a client machine. Even if the references are properly combinable, there is no teaching of how to properly combine the disparate features of the two references to arrive at the present invention. Therefore the present invention is not obvious over Scherpbeir in view of Kalajan.

Fifth, Applicant asserts that the combination of Scherpbier and Kalajan destroys the purpose and utility of the prior art invention. The Federal Circuit has determined that sufficient suggestion or motivation to make a proposed modification does note exist if the modification would render the prior art unsatisfactory for its intended purpose. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). Scherpbier teaches a method and system of controlling the browser functions of a user. The listening program of Kalajan allows the user to gain control

-8-

over network resources. Combining Kalajan with Scherpbier would destroy the purpose and utility of both references. The browser functions of Scherpbier would not be externally controlled, or alternately the access to network functions of Kalajan would remain externally controlled, contradicting their intended purpose and utility. For this additional reason, the combination of Scherpbier and Kalajan is improper.

Sixth, Applicant respectfully asserts that the teaching or suggestion to make the claimed combination is only found in the Applicant's disclosure. The teaching or suggestion to make a combination must be found in the prior art. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). Neither Scherpbier nor Kalajan teach control of the various functions of a remote client machine. The present invention provides the only suggestion to combine and extend the browser control method of Scherpbier and the listening program of Kalajan to control a remote client machine. It is improper to use the present invention as a map in this manner. For this further reason, the cited combination is improper.
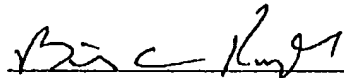
Applicant's traversal of the rejections of independent claims 9 and16 follows the same reasoning as presented above with respect to the rejection of claim 1. As a result of the presented remarks, Applicant asserts that independent claims 1, 9, and 16 are in condition for prompt allowance. Applicant has not specifically traversed the rejections of dependent claims 3-8, 10-15, and 17-22 under 35 USC § 103, each of which depend from independent claims 1, 9 and 16, but believes those claims to be allowable for depending from allowable independent claims. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Reconsideration of the rejections is requested.

Should additional information be required regarding the traversal of the rejections of the claims enumerated above, Examiner is respectfully requested to notify Applicant of such

-9-

required information. If any impediments to the prompt allowance of the claims can be resolved

by a telephone conversation, the Examiner is respectfully requested to contact the undersigned.

Respectfully submitted,

Brian C. Kunzler
Reg. No. 38,527
Attorney for Applicants

Date: February 18, 2003
10 West 100 South
Suite 425
Salt Lake City, UT 84101
Telephone (801) 994-4646
Fax (801) 322-1054

-10-